

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SOUNDEXCHANGE, INC.,

Plaintiff,

v.

ACCURADIO, LLC,

Defendant.

Case No. _____

DECLARATION OF BRIEANNE JACKSON

I, Brieanne Jackson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 21 years of age, am of sound mind and body, and am fully competent to make this declaration.

2. I am employed by SoundExchange, Inc. (“SoundExchange”) as the Deputy General Counsel. I have served in this role since September 2021 and have been employed full time at SoundExchange as an in house attorney since November 2011.

3. I have personal knowledge of the contents of this declaration, and, if called to testify, I swear to testify truthfully and accurately regarding the same.

4. AccuRadio, LLC (“AccuRadio”) filed a Notice of Use of Sound Recordings under the Statutory License with the Copyright Office on June 30, 2004. That Notice identified June 25, 2001, as the date of its initial transmission of a sound recording and initial use of the statutory license for the making of ephemeral sound recordings. *See Exhibit 1* – Notice of Use.

5. Until 2016, AccuRadio regularly provided periodic Statements of Account, Reports of Use, and royalty payments, as required by the regulations implementing the statutory license.

6. In 2016, AccuRadio's payments began to slow down, and they stopped entirely in 2018. SoundExchange sent a letter to AccuRadio addressing its failure to pay. In response, AccuRadio communicated that it did not have the necessary funds or revenue stream to bring its account current. While reserving its rights, SoundExchange engaged in discussions with AccuRadio regarding a payment plan to bring its arrearage current.

7. On February 25, 2020, AccuRadio and SoundExchange (jointly, the "Parties") entered into a payment plan agreement to bring AccuRadio's account current (the "Payment Plan Agreement").

8. AccuRadio failed to make any payments under the Payment Plan Agreement.

9. Subsequently, SoundExchange performed an audit of AccuRadio's statutory royalty payments for the period of January 1, 2015 – December 31, 2017, through which it identified additional royalties due to SoundExchange.

10. In order to facilitate a reconciliation process for outstanding statutory royalty payments and amounts owed under the Payment Plan Agreement, the Parties entered into a tolling agreement on February 25, 2020 (the "Original Tolling Agreement").

11. The Original Tolling Agreement was amended and reinstated on May 19, 2021 (the "Amended and Reinstated Tolling Agreement").

12. Thereafter, on June 29, 2023, the Parties entered into a Forbearance Agreement. In the Forbearance Agreement, the Parties agreed that the total amount of \$ [REDACTED] was owed to SoundExchange as of May 31, 2021 on account of AccuRadio's failure to make royalty payments and pay other fees to SoundExchange as required by its statutory licenses, including without limitation all late fees (the "Reconciled Amount").

13. The Forbearance Agreement set forth a down payment requirement and payment schedule for AccuRadio to satisfy the Reconciled Amount. Further, AccuRadio was required to timely pay SoundExchange all royalty payments and other charges required under the statutory licenses on a monthly basis, as these obligations became due (the “Royalty Payments”).

14. AccuRadio paid the first three (3) months of Royalty Payments that became due under the Forbearance Agreement and the statutory licenses for the months of June, July, and August 2023.

15. Thereafter, AccuRadio failed to make the required Royalty Payments as and when due.

16. On or about December 13, 2023, SoundExchange sent a letter to AccuRadio notifying it of AccuRadio’s payment defaults under the Forbearance Agreement and statutory licenses, and demanding payment of all sums due and payable (the “Notice of Default”).

17. Specifically, the Notice of Default demanded payment in full of all past due Royalty Payments, totaling \$ [REDACTED] as of December 13, 2023, comprised of the following amounts:

| | | |
|-----------------------------------|----|------------|
| Past Due Ongoing Royalty Payments | \$ | [REDACTED] |
| Late Fees | \$ | [REDACTED] |
| Total | \$ | [REDACTED] |

18. After SoundExchange’s service of the Notice of Default, AccuRadio failed to remit the required Royalty Payments within the twelve (12) business day cure period afforded to AccuRadio under Sections 10(g) and 24 of the Forbearance Agreement.

19. Furthermore, AccuRadio failed to remit an additional \$ [REDACTED] in Royalty Payments to SoundExchange for the months of October 2023 through April 2024 as they became due from December 14, 2023 to July 18, 2024. AccuRadio has also failed to identify and remit the

amount of the Royalty Payment it owes for the month of May 2024, which became due on July 15, 2024, and includes late fees accruing through July 18, 2024.

20. As of July 18, 2024, AccuRadio owes a total of \$ [REDACTED] to SoundExchange for overdue Royalty Payments, comprised of the following amounts, which do not include the May 2024 Royalty Payments that are now due:

| | | |
|-----------------------------------|----|------------|
| Past Due Ongoing Royalty Payments | \$ | [REDACTED] |
| Late Fees | \$ | [REDACTED] |
| Total | \$ | [REDACTED] |

21. The foregoing amounts, as well as the unliquidated amounts due for May 2024, continue to accrue statutory late fees as determined by regulation, and additional Royalty Payments and other amounts due under the Forbearance Agreement and statutory licenses may continue to accrue from July 18, 2024 forward.

22. Upon information and belief, AccuRadio is unable to pay its debts associated with the Royalty Payments as they become due.

23. SoundExchange is a financially sound entity with adequate financial resources to support any costs required to be reimbursed should AccuRadio later demonstrate that they have been wrongfully enjoined or restrained.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 19, 2024.


Brienne Elpert Jackson